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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/734,322

12/12/2003

Charles F. Harris JR.

HARRIS-2

1379

7590 06/11/2007  
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EXAMINER

LAVINDER, JACK W

ART UNIT

PAPER NUMBER

3677

MAIL DATE

DELIVERY MODE

06/11/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/734,322

Applicant(s)

HARRIS ET AL.

Examiner

Jack W. Lavinder

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) 5-10, 21, 22, 28, 37, 38, 41-44, 47, 49, 50, 56 and 60 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 11-20, 23-27, 29-36, 39, 40, 45, 46, 48, 51-55, 57-59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 6/15/2006, 6/10/2004, 12/12/2003
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of species 1 in the reply filed on 3/22/2007 is acknowledged. Claim 28 was included as reading on the elected species. Claim 28 includes a first wing section spaced apart by a distance between .25-4.0 inches from a second wing section. This structure reads on figures 4-7 and not on the elected species. Therefore, claim 28 is withdrawn as directed to a non-elected species. Claims 37, 38, 49 and 50 have also been selected by applicant to read on species 1. These claims are directed to the tension limiter as shown in figures 15 and 16 and have not been included with the election of species 1.
2. Claims 5-10, 21-22, 28, 37, 38, 41-44, 47, 49, 50, 56 and 60 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3/22/2007.
3. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).
4. Misnumbered claims 41-59 have been renumbered 42-60.

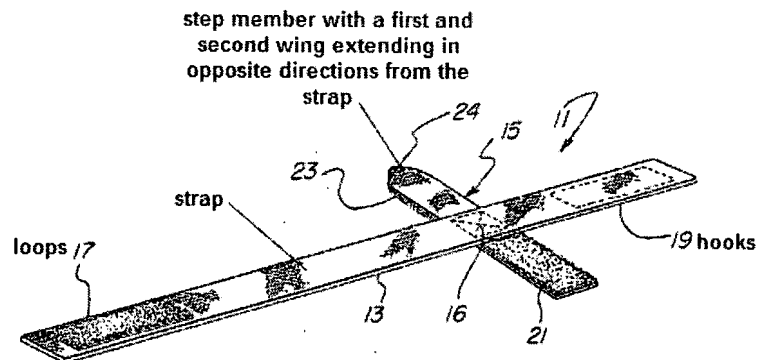
***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

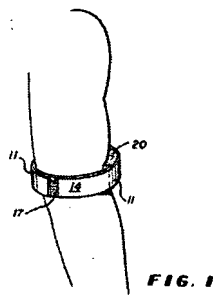
6. Claims 1-4, 11-12, 14, 19, 20, 23-27, 29-30, 32, 35 and 57-59 have been rejected under 35 U.S.C. 102(b) as being anticipated by Uso, Jr., 4759963. Uso, Jr. discloses a device capable of being used to dampen vibrations on a human body part (see annotated figure, column 2, lines 9-15).



7. Claims 36, 39, 40, 45, 48, 51 and 57-59 have been rejected under 35 U.S.C. 102(b) as being anticipated by Sanderson, 3586001. Sanderson discloses the method of providing a stretchable strap with a step member as claimed and wrapping the strap under tension around the body part. The preamble of the claim states that the

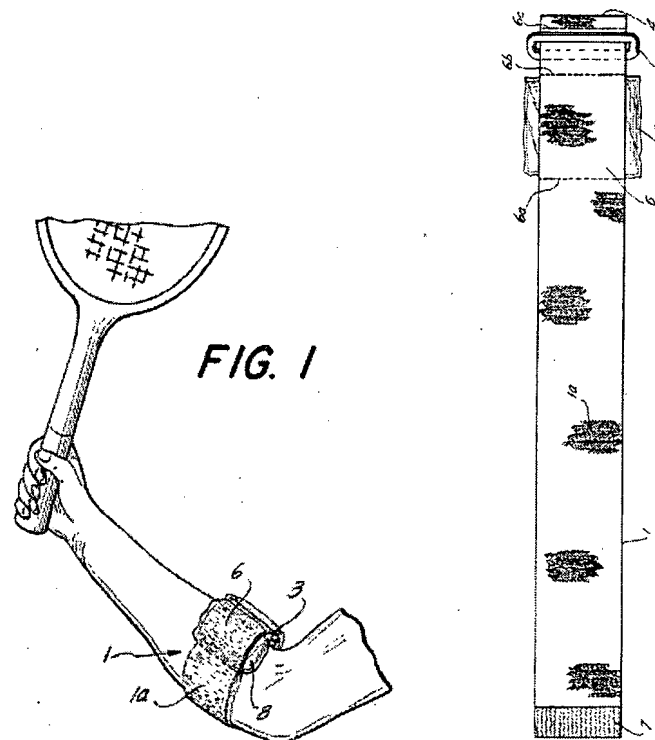
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method is for "dampening vibration of soft tissue or musculature of a human wearer's body part". This is considered to be an intended use of the method steps of providing and wrapping. Sanderson discloses the steps of providing and wrapping and therefore is capable of dampening vibration of soft tissue or musculature of a human wearer's body part.



8. Claims 36, 39, 40, 46, 48, and 51-55 have been rejected under 35 U.S.C. 102(b) as being anticipated by Johnson, Jr., 4628918.

Regarding claims 36, 39, 40, 46, 48, and 51-55, Johnson, Jr. discloses a method for dampening vibration of soft tissue of a human wearer's body part comprising providing a stretchable strap with a step member with a first and second wing and wrapping the strap, under tension, around the body part.



**Claim Rejections - 35 USC § 103**

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 13, 16-18, 31, 33 and 34 has been rejected under 35 U.S.C. 103(a) as being unpatentable over *Uso, Jr.*, 4759963.

Regarding claims 13, 17, 18, 31, 33 and 34, *Uso, Jr.* discloses the strap being made from an elastic woven stretchable material. The claim requires that the material

be selected from the group consisting of neoprene, polyethylene, polyurethane and spandex and that the material has a specific density, tensile strength, minimum elongation and compression deflection. The examiner takes official notice that all of these materials and properties are old and well known. Therefore, it would have been an obvious design choice to use any one of these materials to form the elastic portion of Uso, Jr.'s strap. The strap would function equally well with any of these type of elastomers. Furthermore, the specification fails to disclose any criticality by using these elastomers.

Regarding claim 16, Uso, Jr. discloses attaching the step member to the strap with stitching. It is old and well known that stitching and adhesive are design equivalents in fastening material. Therefore, it would have been an obvious design choice to use adhesive to attach Uso, Jr.'s step member to the strap. Either type of fastening means performs the same function equally as well as the other. Furthermore, the specification fails to disclose any criticality with the use of adhesive to secure the strap to the step member over other fastening means.

11. Claims 1, 13, 15 have been rejected under 35 U.S.C. 103(a) as being unpatentably over Smith, 3,403,429. Smith discloses a strap capable of dampening vibrations by wrapping around a human body part. The device includes a strap (1) and a step member (2), wherein the step member has a length longer than the width of the step member and the width of the strap. Smith also discloses that the two parts are made from a material known under the name "Velcro". It is well known that Velcro fastening straps are made from a plastic flexible material. Furthermore, neoprene,

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polyethylene, polyurethane and spandex are known materials. It would have been obvious to a person having ordinary skill in the art to use neoprene, polyethylene, polyurethane or spandex to form Smith's strap. The reason being that all of these materials perform the same function of providing a flexible strap equally as well as the other and the specification is absent any criticality as to why it is critical to use these materials in the strap.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack W. Lavinder whose telephone number is 571-272-7119. The examiner can normally be reached on Mon-Friday, 9-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jack W Lavinder\  
Primary Examiner  
Art Unit 3677

5/30/2007